

In the Matter of)
)
Creation of A Low Power Radio Service) MM Docket No. 99-25
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A. IDENTIFICATION OF THE COMMENTING PARTY

THE AMHERST ALLIANCE is a Net-based, nationwide citizens’ advocacy group for media reform, including (but not limited to) establishment, retention, and expansion of the nation’s Low Power FM (LPFM) Radio Service. Founded on September 19, 1998 in Amherst, Massachusetts, THE AMHERST ALLIANCE has submitted 160 filings to the FCC during the fourteen years of its existence.

Now, Amherst submits its Written Comments on *Creation of a Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, MM Docket 99-25, FCC 12-28 (“*Fourth Further Notice*”). The final version of this proposed rule will govern the coming “filing window” for a greatly expanded LPFM Radio Service.

B. AMHERST’S RECOMMENDATIONS TO THE FCC

1. We oppose the Commission’s proposal to raise the non-profit incorporation requirement, for the “established community presence” bonus point, from two (2) years to four (4) years .¹
2. We reiterate Amherst’s established support for revising licensing eligibility criteria to make it easier for *experienced* Part 15 operators, Internet stations, or Carrier Current stations to compete with other LPFM applicants.²

¹ *Fourth Further Notice*, Appendix B, at 11.

² Amherst Alliance, *Petition for Rulemaking*, April 7, 2011, and Written Comments in MM Docket 99-25, April 8, 2011.

3. We *support* the Commission’s proposal to allow certain tribal entities to own multiple LPFM stations.³
4. We *support* the Commission’s proposal to allow certain tribal entities to own LPFM-related translators.⁴
5. We *support* allowing LPFM stations *in general* to own translators.
6. We reiterate Amherst’s previously filed proposal to require all new LPFM stations and all new translators to “ramp up,” over two years, from two (2) hours per day of locally originated programming to eight (8) hours per day of locally originated programming.⁵
7. We *oppose* the Commission’s proposal to exempt rural areas from the “local programming requirement” completely.⁶
8. We reiterate Amherst’s established call for allowing translators to air local programming—while requiring that translators which choose this option must meet the same “phased-in” requirement that we propose for new LPFM stations: a two-year “ramp up” from 2 hours per day of locally originated programming to 8 hours per day of locally originated programming.⁷
9. We reiterate Amherst’s standing proposal to allow LPFM stations *and* translators which air 8 hours a day of locally originated programming to “bump” other LPFM stations *and* translators which don’t (with the two-year “ramp up” from 2 hours per day still available).⁸
10. We *oppose* the Commission’s proposal to license only LP100s (50-100 watts) in center city areas⁹ (the most urban 1% of America).¹⁰

3 *Fourth Further Notice* at 58.

4 *Fourth Further Notice* at 56.

5 See Amherst Alliance, *Petition for Rulemaking*, April 21, 2011; and Written Comments in MM Docket 99-25, April 22 and June 29, 2011; and Written Comments in Docket RM-11311, May 27 and July 5, 2011.

6 *Fourth Further Notice* at 63.

7 See Amherst Alliance, *Petition for Rulemaking*, April 21, 2011; and Written Comments in MM Docket 99-25, April 22 and June 29, 2011; and Written Comments in Docket RM-11311, May 27 and July 5, 2011; and Miller Media Group, *Petition for Rulemaking*, April 27, 2006.

8 Amherst Alliance *Id.*, and Written Comments in MM Docket 99-25, February 22, 2011.

9 *Fourth Further Notice*, Appendix B, at 8.

10 For the two most recent examples of Amherst’s long and consistent advocacy of LP10 stations, see Amherst Alliance, Written Comments in MM Docket 99-25, February 4 and June 29, 2011. Amherst’s advocacy for these stations dates back to 1999 Written Comments in Docket 99-25. Amherst has repeatedly advocated licensing such stations throughout its 14 years of existence. *In addition*, on July 31, 1999, 31 organizations and 91 individuals signed a *Joint Statement on Microradio* (see <http://www.roguecom.com/rogueradio/jointstatement.html/>) which strongly endorsed LP10 stations *and* also urged the Commission to afford them Primary Service Status. The institutional signatories included (but were certainly not limited to) ROGUE COMMUNICATION (then of California and the “prime mover” for the Joint Statement), THE AMHERST ALLIANCE of Connecticut, REC NETWORKS (then of Arizona), MICHIGAN MUSIC IS WORLD CLASS! of Michigan, WKJCE RADIO of Pennsylvania, AMERICANS FOR RADIO DIVERSITY of

11. We urge the Commission to “cap” new urban translators, in center city areas, at whatever power level has been set as the maximum wattage for new LPFM stations.
12. In center city areas (the most urban 1% of America’s land area), we support the licensing of 1-10 watt stations, whether as a separate class of LP10 stations *or* as part of a new LP50 class of stations with a 1-49 watt range.¹¹
13. We oppose the Commission’s proposal to award three “bonus points” or more—a huge competitive advantage—to “consortia” applicants (that is, multiple parties who apply jointly and have already reached a “time sharing” agreement for the proposed station).¹²
14. *If* the Commission decides to allow only *one* Tier of LPFM stations in center city areas (which is possible, if not probable), we assert that the Commission should prioritize licensing of LPFM stations of 50 watts or less.
15. We *support* the Commission’s proposal to allow the licensing of LP250 stations in virtually every location *except* center city areas (the most urban 1% of America’s land area).¹³
16. We *oppose* the idea of licensing LP250s without geographical restriction, including in center city areas (the most urban 1% of America’s land area).
17. We *oppose* limiting LP250 eligibility to current LP100 licensees.¹⁴
18. *If* the Commission decides to consider LP100 upgrades to LP250 status during the new LPFM filing window—thereby triggering competition between currently licensed LP100s and newcomer LP250 applicants—we propose allowing currently licensed LP100s one (1) bonus point.
19. We *support* the Commission’s proposal to raise the Board Member residency requirement from ten (10) miles to twenty (20) miles in rural areas.¹⁵

Minnesota, THE COMMITTEE FOR DEMOCRATIC COMMUNICATIONS OF THE NATIONAL LAWYERS’ GUILD of California, and THE MICRO-EMPOWERMENT COALITION of California. (Other signatories, beyond the original 31 organizations and 91 individuals, added their names to the Joint Statement later. These additional names were sent to the FCC through supplemental filings in MM Docket 99-25.) Section 1 (D) of the *Joint Statement* declares as follows: “The LP10 stations should be granted Primary Service Status. In order to allow the widest variety of access, these operations must be allowed and protected.”

11 As proposed, for example, by REC Networks. (See <http://home.recnet.com/node/478>, under “Elimination of LP-10.”)

12 *Fourth Further Notice* at 62.

13 *Fourth Further Notice*, Appendix B, at 8.

14 *Fourth Further Notice*, Appendix B, at 8.

15 *Fourth Further Notice*, Appendix B, at 11.

C. AMHERST'S COMMENDATIONS TO THE FCC

(1) Thank You, Commission, For Your Hard Work On The Market-By-Market Analysis. We have been delighted and impressed by the Commission's willingness to invest so much time and energy in this approach.

The Commission's labors have been crucial for a just resolution of the conflict between new LPFM applicants and pending translator applicants. In addition, the market-by-market analysis, including grid modifications in some cases, have greatly refined the Commission's ability to design and implement an "equitable and efficient" LPFM filing window.

As we discuss below, however, the Commission's greatly enhanced *ability* to assure "equitable and efficient" LPFM licensing depends in part on its *willingness* to abandon the absolutely terrible idea of eliminating 1-10 watt stations in highly urban areas.¹⁶

(2) Thank You, Commission, For A Wise Approach Overall. With the exception of the two items referenced below, the Commission has fashioned a truly fine rule. In particular, we find it difficult to imagine how the Commission could have struck a more legally sound—and equitable—balance between new LPFM applicants and pending translator applicants.

(3) The Proposal To Eliminate 1-10 Watt Stations Stains A Generally Excellent Proposed Rule. The Commission's inexplicable proposal to eliminate urban 1-10 watt LPFM stations stands in shocking contrast to a generally superb proposed rule.

In this regard, we incorporate by reference the personal Docket 99-25 *Written Comments of Don Schellhardt, Esquire and Nickolaus E. Leggett* of April 4, 2012, April 5, 2012 and April 6, 2012.¹⁷ The first two of these Written Comments present quantitative evidence, prepared by REC NETWORKS of Maryland and COMMON FREQUENCY of California, that the Commission's proposal of *LPI00s Only* in urban areas could eliminate at least four out of every five urban LPFM stations.¹⁸ This bears repeating: *At least four out of every five potential urban LPFM stations could be eliminated.*

¹⁶ *Fourth Further Notice* at 48.

¹⁷ *As cited.*

¹⁸ Common Frequency, Letters *in* MM Docket 99-25, February 27 and March 9, 2012, *and* REC Networks, Letter *in* MM Docket 99-25, March 8, 2012.

According to REC NETWORKS of Maryland, there will not be a single LPFM station—in the entire City of New York—unless stations below 40 watts are licensed.¹⁹ According to the same source, there will not be a single LPFM station—in all of Detroit—unless stations below 10 watts are permitted.²⁰

Yet the Commission is proposing to allow *nothing* but LP100 stations in New York City, *nothing* but LP100 stations in the City of Detroit, and, indeed, *nothing* but LP100 stations, and in some cases LP250 stations, at any location in the entire country.

We cannot find a diplomatic way to say this: The Commission’s proposal to eliminate 1-10 watt LPFM stations would cut the heart out of urban LPFM.

We are, frankly, stunned to see such an appalling proposal embedded in such a generally outstanding proposed rule. The contrast is striking. It is as if the Commission assembled a crew of skilled and hardworking craftspeople to shape this proposed rule—but hidden among them, somewhere, was a skilled and hardworking saboteur.

(4) The Commission Should Broaden, Not Narrow, Licensing Eligibility. Besides the proposed elimination of urban 1-10 watt stations, Amherst’s only other major concern with the proposed rule is its contemplated narrowing of LPFM licensing eligibility criteria. We believe that the current community of LPFM stations, while a vast improvement over what came before, should nevertheless be strongly encouraged to become *more* diverse rather than *less*.

To this end, the Commission should avoid shrinking the pool of eligible LPFM applicants by tying the “established community presence” bonus point to four (4) years of non-profit incorporation instead of the present two (2) years. Instead, we urge the Commission to move in the opposite direction—by adopting Amherst’s established proposal to open doors for those with substantial experience in a community’s Part 15 radio station, Internet radio station, or Carrier Current radio station.²¹

¹⁹ *Id.*

²⁰ Michelle Eyre of REC Networks, in a conversation with Don Schellhardt of The Amherst Alliance.

²¹ Amherst Alliance (and nine other parties), *Petition for Rulemaking*, April 7, 2011, and Written Comments in MM Docket 99-25, April 8, 2012.

D. GENERAL THEMES IN AMHERST'S RECOMMENDATIONS

(1) *Smaller Can Be Better In Central City Areas.* For a list of geographical areas that Amherst is focusing upon, as potential homes for smaller LPFM stations, please see the Appendix to these Comments.

In these areas, where stations of all kinds are starved for spectrum, the Commission needs to reverse its usual axiom of Bigger Is Better. In America's center city areas, Smaller Is Better—because Smaller means *more*. It means more new voices that can be spread over limited spectrum, and it means stations sized to treat neighborhoods rather than entire metropolitan areas. Because localism and diversity are primary goals of LPFM, the objective of *numerically* optimized LPFM stations trumps the objective of *operationally* optimized LPFM stations—short of setting wattage levels so low that financial viability is lost.

Given that localism and diversity are the higher priorities for LPFM, it makes sense to downsize LPFM wattage in center city until loss of financial viability is approached. Consequently, although some in the LPFM movement are concerned that the Commission would allow 10 watt LPFM stations to be displaced by any Secondary Service station with 50 watts, and 50 watt LPFM stations to be displaced by any kind of Secondary Service stations with 100 watts, it would make no sense to do this *if* the Commission is truly following the Local Community Radio Act mandate to increase diversity and localism on the airwaves.²² At least in center city areas, Secondary Service stations with higher wattage should not be able to displace lower wattage Secondary Service stations on the basis of wattage alone. If any Secondary Service stations are allowed to displace another Secondary Service station on the basis of wattage alone, it should be the *lower* wattage stations—because a displaced 100 watt station in an urban area can make room for two, three, or more 10 watt stations.

Once again: Commission traditions notwithstanding, the goal of *numerical* optimization should rank above the goal of *operational* optimization when it comes to areas where spectrum is scarce.

As a related point regarding displacement, we also urge the Commission to adopt Amherst's 2011 proposal to extend special displacement to certain LPFM stations *and* translators *and* Class D educational stations.²³

²² FCC, *Press Release*, "FCC Takes Additional Steps to Implement the Local Radio Community Radio Act," March 19, 2012; *see also* Local Community Radio Act of 2010 – Pub. L. No. 111-371, 124 Stat. 4072 (2011) ("LCRA"), Sec. 7(6).

²³ Amherst Alliance, Written Comments *in* MM Docket 99-25, February 22, 2011.

(2) Center City Areas Are “The Last Frontier” For The LPFM Movement. In a recent letter to the current FCC Commissioners,²⁴ THE AMHERST ALLIANCE stated that its Members recently voted to advocate urban LP10 stations over rural LP250 stations, *if* they are forced to choose between the two.

As the letter also stated, 44% of Amherst’s Members live in rural areas, 37% live in small towns and cities, and only 19% live in metropolitan areas with more than 250,000 people. Therefore, the vast majority of Amherst Members would personally benefit more from LP250 licenses than from LP10 licenses—but they see LPFM as a *cause*, not a loose coalition of self-interested parties.

The Members of Amherst are patriots, not opportunists.

(3) LPFM Licenses Should Be Open To Newcomers. This belief is part of the philosophical foundation for Amherst’s commitment to broadening of LPFM licensing eligibility and its opposition to excluding newcomers from LP250 licenses (even as we support awarding current LP100 licensees one bonus point *if* the Commission decides to award LP250 licenses competitively, in the next LPFM filing window).

E. THE NATURE OF AMHERST AS A DIRECT DEMOCRACY

The United States is—or, at least has traditionally been—a democratic Republic. While the size of the basic electorate has expanded greatly over the decades, there has been a continuing commitment to the principle that the people’s business should be conducted through *representatives*.

THE AMHERST ALLIANCE goes farther. It is a *direct* democracy, not a representative democracy. It has less in common with the modern United States Congress than it has with the decision-making of ancient Athens or a modern Town Meeting in New England.

In THE AMHERST ALLIANCE, the President may do more of the talking than anybody else—but, in the end, *everybody* votes on *everything*. So the voice of Amherst is truly the voice of a community.

While the number of Amherst Members is small, Amherst’s nature as a direct democracy means that its views typically represent a *consensus*. Not every LPFM advocacy group can make this claim.

²⁴ Amherst Alliance, Written Comments *in* MM Docket 99-25, March 7, 2012.

Indeed, the strong tendency toward consensus decision-making is reinforced by two Amherst procedures. First, there is a formal rule that any vote to overturn an established Amherst position requires a two thirds majority. Second, there is an unwritten rule that the President of Amherst may impose a two thirds majority requirement *if* he or she determines that an issue is “sensitive”. In practice so far, this has meant that the President has determined that one or more people on the minority side may walk out if the majority’s position is adopted.

Therefore, a great deal of the time, an Amherst policy position reflects the wishes of a “super-majority”. The position is indeed based on a strong level of agreement within the Amherst Membership.

We add that the points of consensus span a diverse range of LPFM advocates. Some LPFM advocacy groups “specialize” in Christian evangelism while others “specialize” in the advocacy of “social justice” (Hard Left version). Amherst—along with REC NETWORKS of Maryland, which is led by a *former* Member of Amherst—tends to speak for all of the LPFM advocates who don’t join one of the more ideologically driven groups.

As Amherst has mentioned in these Written Comments at an earlier point, our Members are mostly a mix of Americans from rural areas, small towns and small cities—with just enough true urbanites to add a little spice. While we are a little more centrist than we used to be, we are still a bubbling brew of evangelical Christians and agnostics, Republicans and liberals, straights and gays. Our last President, Stephanie Loveless of Michigan, was transgendered.

In short:

Diversity R Us. When Amherst Members reach a consensus on something, it *means* something.

F. LPFM WATTAGE IN “CENTER CITY AREAS”

(1) “Center City Area” Defined. We believe that 1-10 watt stations belong in “center city areas” while LP250s don’t. We are defining “center city areas” as those urban regions where the Commission is proposing that no LP250 stations should be licensed.

We have calculated that these areas cover roughly 1% of the land area of the Lower 48 United States. We agree with the Commission that LP250 stations should be free to compete in the other 99% of the Lower 48 land area. However, 1-10 watt stations deserve and require a sanctuary somewhere.

We have prepared the Appendix to these Written Comments in order to present the 100 geographical areas where 1-10 watt stations should be licensed. Again: We have taken our “cue” from the Commission. Any area that the Commission considers too urban for an LP250 station is presumed to be urban enough to support viable LP10 stations.

(2) Consequences Of The FCC's Proposed “LP100s Only” Policy. We have already mentioned data cited in some of the Schellhardt/Leggett Written Comments in Docket 99-25.²⁵ Based on research conducted by REC NETWORKS of Maryland and COMMON FREQUENCY of California,²⁶ Don Schellhardt and Nickolaus Leggett concluded that the Commission’s proposal for “LP100s only” could eliminate four or more out of every five potential LPFM stations in center city areas.

Specifically, in the three cities of New York, Los Angeles, and San Francisco—not the metropolitan areas, but just the cities themselves—a possible policy of “LP10s only” would allow at least 17 LPFM stations, a combination of LP10s and LP100s would allow 14 LPFM stations and the Commission’s proposal for “LP100s only” would allow only three stations. A policy of “LP100s only” would reduce New York City—the most populous city in America, with significantly more people than Los Angeles and San Francisco combined—from a single LPFM station to no LPFM stations at all. Not one. In America's flagship city. Not one. Thanks to an eminently avoidable Commission policy.

Subsequently, as we have also mentioned earlier, Amherst learned from REC NETWORKS that even a shift from “LP100s only” to “LP50s only” would not save a single LPFM station. Detroit—home of the world-famous “Motown” tradition—would not be permitted a single LPFM station where new local music could be showcased. All because of an eminently avoidable Commission policy. Only preserving the LP10 class of stations, or structuring a new LP50 class that ranges from 1 to 49 watts, could undo this injury to the people of The Motor City.

(3) Prioritization Of Center City Stations Of 50 Watts Or Less. During the course of developing these Written Comments, Amherst Members were asked this question: “If the FCC were to

²⁵ *Written Comments of Don Schellhardt, Esquire and Nickolaus E. Leggett in MM Docket 99-25, April 4, 2012 and April 5, 2012.*

²⁶ *Common Frequency, Letters in MM Docket 99-25, February 27 and March 9, 2012, and REC Networks, Letter in MM Docket 99-25, March 8, 2012.*

decide to limit the LPFM Radio Service to only *one* Tier of stations in center city areas (which is possible if not probable), *which* Tier of stations would you want to see adopted?"

Here are the results:

LP10 Class (1-10 Watts ERP)	45%
REC NETWORKS Version Of LP50 Class (1-49 Watts ERP)	45%
"Compressed" Version Of LP50 Class (11-49 Watts ERP)	0%
LP100 Class (50-100 Watts ERP)	10%
LP250 Class (101-250 Watts ERP)	0%

Thus, virtually *all* Members of THE AMHERST ALLIANCE would *prioritize* stations of 50 watts or less in center city areas—and would also want 1-10 watt stations to be included in any Tier of LPFM stations the Commission might adopt.

(4) Need For Displacement Protection For LPFM Stations. Please see Amherst's discussion in Section D (1) of these Written Comments.

(5) Need For A "Cap" On New Translator Wattage In Center City Areas. New LPFM stations are at an inherent disadvantage, relative to translators, if urban translators are allowed to operate at 250 watts while the largest LPFM station is 10 watts or 50 watts. With this differential, a city with one newly licensed translator and one newly licensed LPFM station may *appear to be* at parity, numerically, between the two groups of Secondary Service stations. *In reality*, however, the two groups will *not* be at parity—because the area covered by the translator will be several times larger than the area served by the LPFM station.

For this reason, we fervently urge the Commission to "cap" future urban translators at whatever wattage is set as the maximum wattage for urban LPFM stations.

G. LPFM WATTAGE GENERALLY

(1) Support For Siting Of LP250 Stations In Areas Proposed By The Commission. Amherst Members have voted to support the Commission's proposal to allow LP250 stations in every geographical area *not* listed in our Appendix to these Written Comments.

Previously, THE AMHERST ALLIANCE had proposed to limit LP250 stations to "truly rural areas"—which we defined as proposed service areas falling 100% outside of any Standard Metropolitan Statistical Area (SMSA) or Micropolitan Standard Metropolitan Statistical Area (Micro

SMSA). Because this was our established position, Amherst's shift to supporting the Commission's approach required a two thirds majority vote under standing Amherst rules. In actuality, 82% of our Members voted to adopt the new position.

(2) Opposition To Siting Of LP250 Stations In Center City Areas. Amherst voted *unanimously* to oppose allowing LP250 stations into the center city areas listed in the Appendix to these Written Comments. Our Members were concerned that the licensing of a single station at 250 watts—or at the highest available wattage up to 250 watts, whether that be 190 or 150 or 110—could block the chance to license several smaller LPFM stations in urban areas.

(3) Support For Allowing LP100 “Upgrades” To LP250 Stations. Amherst Members have voted unanimously to support the proposed “upgrade” option. They have also voted, by a substantial but not towering majority, to support awarding one bonus point to currently licensed LP100 stations *if* the upgrades are considered in the competitive setting of the next LPFM filing window.

The Amherst majority appears to believe that the currently licensed LP100s have earned one bonus point for successfully remaining On Air for as long as they have been. There was a view that LP100 “survivors” were probably doing something right.

(4) Support For Allowing “Newcomers” To Apply For LPFM Licenses. At the same time, a majority of Amherst Members do not believe that “The LPFM Establishment” should be granted an unchallenged monopoly over LP250 licensing opportunities.

In addition, since the Commission plans to license LP250 stations primarily in rural and suburban areas,²⁷ some Amherst Members believe that the number of potential LP250 stations is likely to exceed the number of current LP100 stations. These Members are concerned that the number of current LP100 stations may then impose an unnecessary ceiling on the number of LP250 stations.

H. LICENSE ELIGIBILITY CRITERIA

(1) Opposition To The FCC's Proposed Requirement For Four Years Of Non-Profit Incorporation. In the recent Amherst voting, our Members unanimously opposed this proposed requirement.

²⁷ *Fourth Further Notice supra* at 48.

Amherst Members generally believe that the current crop of LPFM stations is too ideological, with over-representation of the Hard Left and the Religious Right. In the next wave of LPFM licensees, most Amherst Members hope to see a greater representation—not an exclusive representation, but a greater representation—of everyday America: that is, politically moderate broadcasters or those more concerned with airing music than winning elections.

There is certainly room for both the Hard Left and the Religious Right in the LPFM community—and we certainly don't advocate unconstitutional measures to inhibit their free speech.

However, we believe that the Commission currently “recruits” LPFM broadcasters so exclusively from formally incorporated non-profits that it has created a strong bias in the pool of LPFM applicants. We posit that, compared to a more statistically typical group of Americans, “cause-minded” ideologues are disproportionately attracted to formally incorporated non-profits while “go it alone” individualists are disproportionately likely to stay away.

Since political moderates are less likely to be ideologues, and geniuses are more likely to be individualists, we theorize that the Commission’s current “over-recruitment” from incorporated non-profits may be unintentionally shrinking the size of the political Center in the community of LPFM stations—and also, perhaps, dulling the LPFM community’s creative edge by discouraging those who didn’t join non-profits because they can follow the rules *but* may not “play well with others”.

(2) Support For Broadening License Eligibility Criteria. Amherst once again urges the Commission to act on the 10-party Petition For Rulemaking to broaden LPFM licensing eligibility.²⁸ The Petition asks the Commission to count, toward the “established community service” bonus point, two (2) years of locally focused service with a Part 15 radio station, Internet radio station, or Carrier Current radio station. The Petition also presents the alternative of leaving the current “established community presence” bonus point alone—while creating a new bonus point, for “radio-related experience,” to embrace those who have served their communities, for at least two (2) years, but have done so outside a formally incorporated non-profit organization.

(3) Opposition To The FCC’s Proposed Bonus Points For “Consortia”. Amherst Members voted unanimously to oppose the proposed bonus points, which would be large enough to confer a huge competitive advantage upon “consortia” applicants.

²⁸ Amherst Alliance (and nine other parties), *Petition for Rulemaking*, April 7, 2011, and Amherst Alliance, Written Comments in MM Docket 99-25, April 28, 2012.

Some of this opposition may spring from the personalities involved. Most Amherst Members are pragmatic enough to join a consortium if that's the only way to gain an LPFM license—but are also individualistic enough to avoid collectives where possible.

Nevertheless, a more important element in Amherst's vote was the widespread concern that unethical interests could string "paper parties" together in order to acquire an LPFM license—and then run the resulting station, in practice, as a solo operation, perhaps even one orchestrated by parties outside the community.

Michelle Eyre of REC NETWORKS has shared with us that she has this concern as well.

Basically, Amherst—and also, apparently, REC—believe the "consortia" approach offers an unacceptably high potential for "fraud and abuse" by those with weak ethical self-restraint.

I. "LOCAL ORIGINATION OF PROGRAMMING"

(1) Support For A "Local Origination" Requirement For New LPFM Stations. The Commission has asked whether two bonus points—rather than the current single point—should be awarded to new LPFM applicants who commit to airing 8 hours of locally originated programming per day.

Amherst would go farther. By a unanimous vote, we have just reaffirmed our long standing position that all new LPFM applicants should be *required*—not encouraged, but *required*—to air 8 hours of locally originated programming per day.

We also support a two-year "ramp up" to those 8 hours, starting at 2 hours a day, but we believe every new LPFM station should be required to complete that "ramp up". Without that "ramp up," where are the localism and diversity justifications for handing out an LPFM license? Why should an LPFM license go to *anyone* who cannot add more localism and diversity to the airwaves?

We believe there is no place for a satellitor in LPFM clothing.

Not anywhere.

Period.

(2) Opposition To A "Local Origination" Exemption For Rural Areas. Amherst Members voted unanimously to oppose the Commission's proposal for a rural area exemption. Some of them opposed the exemption bitterly.

Two of the fiercest opponents hail from rural areas themselves: Alan McCall of the Florida Panhandle and Harvey Caplan of the Nevada desert.

Both gentlemen raised the same three basic points:

(a) They are both planning to seek licenses for LPFM stations in rural areas—and they're ready to “go local” from Day One. If they can do it in a rural area, they don't see why some other applicant can't do the same thing.

(b) It's been their personal observation that aspiring LPFM broadcasters who say they *can't* “ramp up” from 2 hours a day are really looking for a satellitor they can disguise as an LPFM. People who *really* want an LPFM station have already done *lots* of thinking about how they can start at 2 hours of local programming per day and then ascend to 8 hours of local programming per day. For someone whose heart is *really* into LPFM, a phased shift to a reasonable level of local programming is a joy—not a burden.

And

(c) If you can't find in a given community enough real LPFM broadcasters, who don't want a satellitor in disguise, then wait a while. It's better to let that spectrum lie fallow until a real LPFMer comes along. (Of course, if the Commission adopts Amherst's proposal to allow LPFM stations and translators which air local programming to “bump” LPFM stations and translators which don't, the Commission could always license a satellitor now and replace it with a locally grounded station later.)

(3) Support For Allowing Translators To Air Local Programming. This approach has been proposed in a Petition For Rulemaking by Miller Media Group.²⁹ This Petition led to Docket RM-11331. Amherst has supported the basic idea—and has, indeed, included it as one part of its own, more comprehensive Petition For Rulemaking.

We do believe, however, that any translator which opts for local programming should be required to “go all the way” to 8 hours of local programming per day. Of course, the translator should be able to choose the same two-year “ramp up” that we propose to make available to a LPFM stations.

(4) Support For Sub-Dividing Secondary Service Based On Local Programming. Sooner or later, spectrum scarcity will force the Commission to move beyond “First Comes First Served” to weighing the “Social Value” of existing stations against the “Social Value” of potential new stations.

²⁹ Miller Media Group, *Petition for Rulemaking*, April 27, 2006.

That day hasn't come, but it's coming. It may start first in the cities, but it will spread.

Once the Commission—or Congress—decides that the herd of existing stations must be thinned, what better measure of a station's "Social Value" can be found than its ability and willingness to nurture the *locality* it serves?

J. FCC PROPOSAL TO BOLSTER LPFM IN NATIVE NATIONS³⁰

(1) Support For Multiple Station Ownership, and LPFM Ownership Of FM Translators, On Larger Indian Reservations. We believe these measures are justified by the difficulties of linking a single community that spreads across a Reservation landscape with large land area and low population density. For example, the Fort Berthold Indian Reservation in North Dakota—governed by the MHA (Mandan, Haradatsa & Arikara) Nation—is larger than the State of Rhode Island but has fewer than 6000 residents. Its population density is four people per square mile.

Despite our support, however, we add that any LPFM translator should be barred from re-broadcasting any signals *other* than those from the LPFM station which owns it.

(2) Support For Ownership Of Translators By LPFM Stations *In General*.³¹ We consider this an idea whose time has come. However, we believe that the rebroadcasting requirement referenced above should apply to these LPFM-owned translators. We further believe that the spirit of LPFM requires a strict, and very modest, limit on how many translators an LPFM station may own—as well as reasonable limitations on the range of circumstances under which one or more translators may be acquired.

K. OTHER ISSUES

(1) Support For A More Lenient Board Member Residency Requirement. THE AMHERST ALLIANCE strongly supports the Commission's proposal to make the residency requirement more lenient for Board Members of LPFM stations in rural areas. For such Board Members, the maximum distance from the LPFM station to the Board Member's residence would be raised from ten (10) miles to twenty (20) miles.³²

³⁰ *Fourth Further Notice supra* at 54.

³¹ *Fourth Further Notice* at 56.

³² *Fourth Further Notice* at 62.

Since we are an organization with numerous Members in rural areas, it is not surprising that this proposal is very popular within Amherst. In fact, the vote to endorse it was unanimous. (As one longtime Member of Amherst, Chuck Conrad of Texas, has been saying for years: “I have to drive 20 miles just to pick up my mail.”)

Incidentally, a significant minority of Amherst Members called for adjusting the distance requirement in all areas—not just rural areas.

During the discussions, it was noted that sometimes people become involved with community activities near their place of employment as well as their community of residence. In the larger metropolitan areas, the two locations are very often more than 10 miles apart.

(2) Support For Defining “State” Narrowly When Applying Certain Restrictions.³³ The Commission has asked whether “State” should be defined narrowly when applying certain restrictions³⁴ that were clearly adopted by Congress with the State of New Jersey in mind.

Amherst does not believe these restrictions should be interpreted to apply to either Puerto Rico or the District of Columbia. The legislative language in question was endorsed by the New Jersey Association of Broadcasters and advanced by a United States Senator from New Jersey. It contains no words or phrases which suggest that the word “State” means anything other than the word “State.”

Therefore, the restrictions in question should be limited to the State of New Jersey.

We add that nothing in the legislative language indicates that the population criterion for triggering the restrictions should be anything other than the population of a State at the time of the law’s enactment. That is: Nothing in the legislative text states or implies that the restrictions should be extended to other States whose populations might grow to exceed the threshold over time.

(3) Position On Intermediate Frequency (IF) Relaxation And Second Adjacent Channel Waivers. On these matters,³⁵ we defer to the expertise of REC NETWORKS of Maryland and COMMON FREQUENCY of California. Their technical mastery of these subjects exceeds our own.

³³ *Fourth Further Notice supra* at 40.

³⁴ LCRA, Sec. 7(6).

³⁵ *Fourth Further Notice supra* at 52 and *supra* at 16, respectively.

L. CONCLUSION

For the reasons set forth herein, THE AMHERST ALLIANCE urges the Federal Communications Commission to adopt Amherst's recommendations and then proceed with issuance of a suitably modified proposed rule. Our highest priority proposed modifications are: (1) eliminating the elimination of urban 1-10 LPFM watt stations; and (2) broadening LPFM licensing eligibility, in the manner advocated by THE AMHERST ALLIANCE, rather than narrowing it by barring more recently non-profits and conveying a huge competitive advantage upon consortia applicants.

Respectfully submitted,

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APPENDIX

LIST OF TOP 100 CENTER CITY AREAS

Prepared by:

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And

Wesli AnneMarie Dymoke of Connecticut, Chair, Special Amherst Advisory Board and President Emeritus, THE AMHERST ALLIANCE

May 3, 2012

THE AMHERST ALLIANCE fervently advocates licensing of 1-10 watt ERP Low Power FM (LPFM) stations in all areas where the Commission proposes to prohibit licensing of LP250 stations. Amherst also strongly supports the proposed prohibitions of LP250 stations, which would apply in all center city areas of the Top 100 Arbitron markets.³⁶

THE AMHERST ALLIANCE can support licensing of urban 1-10 watt ERP LPFM stations as either a separate LP10³⁷ class of stations *or* as part of a class of LP50 stations, ranging from 1 to 49 watts ERP.

The Top 100 Arbitron Markets are a “snapshot.”³⁸ Market rankings are subject to change over time.

Underlined Markets are those that have been designated by the Federal Communications Commission as Spectrum Limited.

³⁶ *Fourth Further Notice*, Appendix B, at 8.

³⁷ As currently defined under § 73.811(b).

³⁸ Rankings here taken from *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, MM Docket 99-25, FCC 12-29, Appendix A (“Arb#Rank” column).

A. THE TOP 20 MARKETS

The Commission proposes to prohibit the licensing of LP250 stations,³⁹ and THE AMHERST ALLIANCE supports the licensing of urban 1-10 watt LPFM stations, within 18 miles (30 kilometers) of the center of the center city in the following Markets:

- | | | |
|-----------------------------|---------------------------------|----------------------------------|
| 1. <u>New York</u> | 8. <u>Washington, D.C.</u> | 15. <u>Phoenix</u> |
| 2. <u>Los Angeles</u> | 9. <u>Atlanta</u> | 16. <u>Minneapolis-St. Paul</u> |
| 3. <u>Chicago</u> | 10. <u>Boston</u> | 17. <u>San Diego</u> |
| 4. <u>San Francisco</u> | 11. <u>Detroit</u> | 18. <u>Nassau-Suffolk (L.I.)</u> |
| 5. <u>Dallas-Ft. Worth</u> | 12. <u>Miami-Ft. Lauderdale</u> | 19. <u>Tampa-St. Petersburg</u> |
| 6. <u>Houston-Galveston</u> | 13. <u>Seattle-Tacoma</u> | 20. <u>Denver-Boulder</u> |
| 7. <u>Philadelphia</u> | 14. <u>Puerto Rico</u> | |

B. MARKETS 21-50

The Commission proposes to prohibit the licensing of LP250 stations, and THE AMHERST ALLIANCE supports the licensing of urban 1-10 watt LPFM stations, within 12 miles (20 kilometers) of the center of the center city in the following Markets:

- | | | |
|-------------------------------------|---------------------------------|------------------------------------|
| 21. <u>Baltimore</u> | 31. <u>Salt Lake City-Ogden</u> | 41. <u>Middlesex-Somerset</u> |
| 22. <u>St. Louis</u> | 32. <u>Las Vegas</u> | 42. <u>Providence-Warwick</u> |
| 23. <u>Portland, OR</u> | 33. <u>Kansas City</u> | 43. <u>Raleigh-Durham</u> |
| 24. <u>Charlotte-Gastonia</u> | 34. <u>Orlando</u> | 44. <u>Norfolk-Virginia Beach</u> |
| 25. <u>Pittsburgh, PA</u> | 35. <u>Columbus, OH</u> | 45. <u>Nashville</u> |
| 26. <u>Riverside-San Bernardino</u> | 36. <u>Austin</u> | 46. <u>Greensboro-Winst.-Salem</u> |
| 27. <u>Sacramento</u> | 37. <u>San Jose</u> | 47. <u>New Orleans</u> |
| 28. <u>San Antonio</u> | 38. <u>Milwaukee-Racine</u> | 48. <u>Oklahoma City</u> |
| 29. <u>Cincinnati</u> | 39. <u>Newburgh-Middletown</u> | 49. <u>West Palm Beach-Boca</u> |
| 30. <u>Cleveland</u> | 40. <u>Indianapolis</u> | 50. <u>Jacksonville</u> |

³⁹ *Fourth Further Notice*, Appendix B, at 8.

C. MARKETS 51-100

The Commission proposes to prohibit the licensing of LP250 stations, and THE AMHERST ALLIANCE supports the licensing of urban 1-10 watt LPFM stations, within 6 miles (10 kilometers) of the center of the center city in the following Markets:

- | | | |
|----------------------------------|--------------------------------|-----------------------------|
| 51. Memphis | 68. <u>Albuquerque</u> | 85. Syracuse |
| 52. Hartford-New Britain | 69. Grand Rapids | 86. Gainesville-Ocala |
| 53. <u>Monmouth-Ocean (N.J.)</u> | 70. <u>Allentown-Bethlehem</u> | 87. Stockton |
| 54. Louisville | 71. Wilkes Barre-Scranton | 88. Monterey-Salinas |
| 55. <u>Buffalo-Niagara Falls</u> | 72. Knoxville | 89. Columbia, SC |
| 56. Richmond | 73. Des Moines | 90. Portland, ME |
| 57. Rochester, NY | 74. Omaha-Council Bluffs | 91. Springfield, MA |
| 58. McAllen-Brownsville | 75. El Paso | 92. <u>Colorado Springs</u> |
| 59. Birmingham | 76. Sarasota-Bradenton | 93. <u>Spokane</u> |
| 60. Greenville-Spartanburg | 77. Bakersfield | 94. Daytona Beach |
| 61. Tucson | 78. <u>Akron</u> | 95. Toledo |
| 62. Ft. Myers-Naples | 79. <u>Wilmington, DE</u> | 96. Lakeland-Winter Haven |
| 63. <u>Dayton</u> | 80. Harrisburg-Lebanon | 97. Mobile |
| 64. <u>Honolulu</u> | 81. Baton Rouge | 98. Ft. Pierce-Stuart |
| 65. Albany-Schenectady-Troy | 82. Greenville-New Bern | 99. <u>Wichita</u> |
| 66. Tulsa | 83. <u>Charleston, SC</u> | 100. Madison |
| 67. Fresno | 84. <u>Little Rock</u> | |
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